

# EXHIBIT B

**In the Matter Of:**  
**KENNEDY vs BASIL**

1:18-cv-02501

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**ELIZABETH KENNEDY BOGOJEVIC**

*January 09, 2019*

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1 E. Kennedy

2 him I told him that, and it was sort of an  
3 ongoing conversation, that we would need to  
4 continue to raise money until our sales could  
5 support the business.

6 Q. Okay. Let's go back to paper.

7 (E-mail marked EK Exhibit 29 for  
8 identification.)

9 (Handed.)

10 Q. Please take a moment to review  
11 that.

12 A. Okay.

13 Q. Down on the bottom of the first  
14 page, last paragraph there, it says, this is  
15 you writing to Bob, "I also know that you are  
16 more exposed than you would like to be. You  
17 have gone in way deeper than you ever  
18 intended." What did you mean by that?

19 A. Bob continually would say that he  
20 didn't want to give us more money, that he  
21 had already given us more than he expected  
22 to, but then he kept giving us more money.  
23 And when Shan came on board, Shan told Bob,  
24 also, that he felt Bob was overexposed or Bob  
25 had expressed that to him, but he still

1 E. Kennedy

2 continued to fund the company.

3 So I was just acknowledging that  
4 his contribution was significant and I  
5 understood that he had a lot of skin in the  
6 game, basically.

7 Q. But you wrote here that he has  
8 gone in deeper than he ever intended. Are  
9 you saying that at the time he became  
10 involved in this matter, he intended to give  
11 only so much and now he is --

12 A. It was not my impression, nor his  
13 clearly, since he thought that the company  
14 could turn a profit off of \$250,000, and he  
15 clearly didn't expect that he would need to  
16 put in a million or \$2 million to fund the  
17 company. We all knew that. We all knew that  
18 he didn't understand how much money this was  
19 going to take.

20 Q. Okay. But you did?

21 MR. GOLDENBERG: Objection.

22 A. No, I didn't know.

23 Q. Okay. Was it his failure to  
24 invest more money into the company that  
25 caused it to shut down, in your view?

1 E. Kennedy

2 Now, did you, in fact, start to  
3 close down the company?

4 A. Shortly after that, I cancelled  
5 spring production. Resort production was  
6 90 percent done at this point. We had  
7 started mid November, started only because  
8 Bob promised us that the factor, his money  
9 was coming through, so we had to finish  
10 Resort. But, yeah, we basically ceased all  
11 work on other operations. But employees  
12 stayed to finish Resort.

13 Q. So you did not shut down the  
14 company right away, you pursued Resort?

15 A. When you shut down a company, you  
16 don't just like turn off the lights and leave  
17 abruptly. We had hundreds of thousands of  
18 dollars worth of deposits that were paid to  
19 us by retailers, and money that we spent that  
20 we would have been sued for, so we had to  
21 complete the project that we had committed  
22 to, that we had already been paid in part to  
23 produce.

24 Q. Looking, if you would, at the  
25 second page of this document, this is

1 E. Kennedy

2 Ms. Hardy's e-mail copied to you, sent to  
3 Robert Basil, "If you are not able to fund  
4 the 500,000, then Resort will not ship. So  
5 we move to plan B, which means closing the  
6 business."

7 I see that, as I read this, as a  
8 choice between getting \$500,000, in which  
9 case Resort will ship, or shutting down the  
10 business. Do you disagree with that?

11 A. It's possible she didn't  
12 understand how far into Resort we were. We  
13 already had started shipping Resort at that  
14 point. We had to cancel some of Resort, a  
15 substantial amount, because of this, and I  
16 think she meant spring as well.

17 But we had already undergone --  
18 we had started Resort in the fall. We were  
19 already producing it.

20 Q. Did you explain to Mr. Brazil  
21 that this Resort was already underway and  
22 that finishing it was better than not  
23 finishing it?

24 A. He was well aware because  
25 Artifect, who had placed Adam Victor as the

1 E. Kennedy  
2 VP of production, who was overseeing the  
3 manufacturing of this Resort production  
4 season was reporting back to Brian at least  
5 twice a week. So what was Adam Victor doing  
6 there if not finishing the Resort production  
7 that he was placed there to complete.

8 Q. Well, if you were going to finish  
9 Resort why do you write, "I am sending  
10 everyone home"?

11 MR. GOLDENBERG: Asked and  
12 answered.

13 MR. GROSSMAN: No, it wasn't.

14 MR. GOLDENBERG: Yes, it was.

15 A. I've actually already answered  
16 this.

17 Q. Repeat it, please.

18 A. I gave them the option. I said:  
19 Guys, I don't know what's happening, the  
20 financial deal fell through for the second  
21 time. I have no idea when we are going to be  
22 able to get money in. I don't know if Bob's  
23 going to change his mind, but right now I  
24 have no update for you on your paychecks so  
25 I'm giving you the option to leave and all of

1 E. Kennedy

2 was enough to get us to a point where we  
3 could raise more money or we could at least  
4 keep the company going.

5 Q. So if instead of trying to keep  
6 the company going, you would have just shut  
7 down immediately?

8 A. Well, we did shut down because we  
9 didn't get the money. We shut down like  
10 three weeks after that.

11 Q. But you did complete shipping of  
12 Resort, did you not?

13 A. We did, because we had a legal  
14 liability to our stores because we had  
15 collected money already for that product. We  
16 had to finish it. We had already spent  
17 hundreds of thousands of dollars on the  
18 Resort collection. It would have been --  
19 first of all, illegal to shut down and not  
20 ship the product that had been paid for.

21 Also, it just is illogical, why  
22 would we not finish for a couple of weeks of  
23 collection that we can then receive revenue  
24 on.

25 Q. Regardless of legal obligations



1 E. Kennedy

2 aware that Resort had been shipped out?

3 A. No. I didn't want him to have  
4 access to any funds that were coming in  
5 because he would, as he typically did in the  
6 past in these situations, freeze bank  
7 accounts, yank money out to pay himself money  
8 back, which he would have done for the  
9 payroll tax which he had just paid, or pull  
10 out money to pay his loan to Noah Bank.

11 So it was crucial for the  
12 company, it was in the best interest of the  
13 company and for all of its members, to allow  
14 this money to be spent, to pay the employees  
15 and -- to get the product done so it could be  
16 shipped.

17 Q. So it went into your bank  
18 account?

19 A. Yes.

20 Q. Then you write, "If he is smart  
21 enough to see product in stores and realize  
22 it's Resort, that's the only way he will find  
23 out." That doesn't have anything to do with  
24 money, does it?

25 A. No.